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EASTERN DISTRICT OF TEXAS

CONRADO GAUNA,	§
Petitioner,	8 8 8
versus	§ CIVIL ACTION NO. 1:17-CV-463
WARDEN JONES,	8 8 8
Respondent.	8

MEMORANDUM ORDER OVERRULING OBJECTIONS AND ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Conrado Gauna, through counsel, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. Petitioner challenges the sentence imposed as a result of a conviction for possessing marijuana with the intent to distribute.

The court referred this matter to the Honorable Keith F. GIblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. Concluding that a challenge to the sentence imposed as a result of a conviction, as opposed to a challenge to the conviction itself, could not be asserted in a Section 2241 petition, the magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge recommending the petition be dismissed.

The court has received the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings, and all available evidence. Petitioner filed objections to the Report and Recommendation.

The court has conducted a *de novo* review of the objections asserted by petitioner. After careful consideration, the court is of the opinion the objections are without merit. Petitioner contends the Supreme Court's decision in *Sharbutt v. Vasquez*, 136 S.Ct. 2243 (2016), indicates sentences may be challenged in a Section 2241 petition. However, as *Sharbutt* was a nonsubstantive decision, it does not authorize a federal prisoner to challenge a sentence in a proceeding brought pursuant to Section 2241. *Carter v. Blackmon*, F. App'x , 2018 WL

2041476, at *2 (5th Cir. Apr. 30, 2018). As petitioner has failed to show he was convicted of a nonexistent offense, his claim is not cognizable in a Section 2241 petition. *Reyes-Requena v. United States*, 243 F.3d 893, 904 (5th Cir. 2001).

ORDER

Accordingly, petitioner's objections are **OVERRULED.** The findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge is **ADOPTED**. A final judgment shall be entered dismissing the petition.

SIGNED at Beaumont, Texas, this 14th day of May, 2018.

MARCIA A. CRONE UNITED STATES DISTRICT JUDGE

Maria a. Crone